IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.
WRIT PETITION No.2324 OF 1992.

1. The Principal, Vivekanand College, Tarabai Park, Kolhapur.

2. The Secretary, Shri.Swami Vivekanand Shikshan Sanstha, Tarabai Park, Kolhapur. ..

PETITIONERS.

Versus.

1. Kum.Pawar Varsha Vijayarao, 1103,A-Ward, Shivaji Peth, Kolhapur.

2. The Registrar, Shivaji University, Kolhapur. ..**RESPONDENTS**.

Mr. V.B. Rajvee, Advocate for Petitioner.

Mr. A.H. Palekar, Advocate i/b. Mr. L.T. Salelkar, Advocate for Respondent No.1.

Mr. R.G. Ketkar, Advocate for Respdt.No.2.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:13TH NOVEMBER, 2006.

ORAL JUDGMENT.

1. Heard.

2. The petitioner challenges the impugned order dated 29th January, 1992 passed by the Presiding Officer, College Tribunal, Pune in Appeal No. 14 of 1991. By the impugned order the College Tribunal has allowed the Appeal

filed by the respondent no.1 herein against the order of termination of her services which was issued by the petitioner, and has directed to reinstate respondent no.1 in the post she was holding at the time of her termination of services with payment of all the dues payable to her at the time of her termination which has been set aside.

3. The challenge to the impugned judgment and order is on the ground that the Tribunal failed to take into consideration the affidavits filed on behalf of the petitioners namely of Smt. Rajeshwari Nagappa Pattanshetti though the affidavits filed on behalf of the respondent were duly considered while dealing with the points relating to the allotment of work load amongst Lecturers in the college. It was sought to be argued on behalf of the petitioners that had the Tribunal considered the affidavit of Rajeshwari Nagappa Pattanshetti, it would have been evident to the Tribunal that there was no work-load available for full time Lecturer and therefore the action on the part of the management in terminating the services of the respondent no.1 was fully justified. The

learned Advocate appearing for the respondent no.1, on the other hand, submitted that undisputedly, the respondent no.1 was appointed in the duly sanctioned post and in terms of University Statutes and with the approval of the University and record in that regard clearly discloses that it was full time Lecturer's post and,therefore, the management was not entitled to terminate the services of the respondent no.1 on the alleged ground of non-availability of sufficient work-load. It was also sought to be contended that the fact that the University had approved the post pursuant to the necessary information being furnished by the Principal regarding availability of the work-load, merely on the basis of the affidavit of one of the Lecturer, management could not justify the order of termination of services of the respondent no.1.

4. It is not in dispute that the appointment of the respondent no.1 was in accordance with the provisions of Law applicable to the appointments of the Teachers or Lecturers to whom the provisions of the University Statutes apply. The impugned

judgment and order itself disclose that the University had sanctioned the post as full time Lecturer for 1990-91 under letter dated 16th June, 1990 and the same was approved on the basis of the appropriate report submitted by the Principal regarding the work-load in the Institution. The post was, thus, the full time Lecturer's post to be filled in by appointing a selected candidate in accordance with the provisions of law initially on the probation to be confirmed on being satisfied about the performance of services of the selected candidate. It is also not in dispute that the respondent no.1 was selected for being appointed in the post duly approved by the University and was accordingly appointed. Considering these facts as rightly submitted by the learned Advocate for the respondent, the management had no justification to terminate the services of the respondent no.1 on the alleged ground of non-availability of the work-load. It was not the case of the management that after the approval of the said post and after the appointment of respondent no.1, there was any fall in the number of students on account of which there was decrease in the work-load. In such

circumstances, therefore, the management could not have proceeded to take action on the ground of alleged reduction in the work-load.

5. Once the report while obtaining the approval from the University, discloses availability of work-load sufficient to appoint the respondent no.1 as full time teacher and it was not the case of the management that after her appointment there was decrease in the work-load and on the contrary, it was the case of the management that the work-load continued to be 75 periods per week, there was no question of consideration of any affidavit as such either on behalf of the petitioners or on behalf of the respondents. Undoubtedly, the Tribunal has taken into consideration the affidavits filed on behalf of the respondents i.e. merely to disclose the hollowness in the case putforth on behalf of the petitioners. The judgment of the Tribunal is not based on those affidavits. The judgment is based essentially on the fact that there was no occasion for the petitioners to appoint the respondent no.1 as part- time Lecturer firstly, on account of the approval granted by the University for full

time Lecturer's appointment and secondly sufficient work-load was available for her appointment. The affidavits which are filed on behalf of the respondents were referred by the Tribunal merely to show that the contentions sought to be raised on behalf of the respondents are well corroborated by the materials on record.

6. The affidavit of Smt.Rajeshwari Nagappa Pattanshetti speaks of the incident which took place on 10th of August, 1990 whereby the Principal had called the members of the staff and told them that the part-time appointment order was issued to the candidate. Obviously, the word 'candidate' refers to the respondent no.1. In fact, no credibility can be given to this statement which apparently was made only to please the management to support their case in the appeal, as the order of appointment to the respondent no.1 was not on the basis of the situation which was available in August,1990 but was in terms of the approval granted by the University which was granted on 16th of June, 1990 much prior to 10th of August, 1990. Once the University had approved a full time Lecturer's post in June,

1990 one fails to understand what credibility can be given to the claim of the Principal in August, 1990 about the appointment being on part-time basis. Obviously, the statement was tailor made statement to suite the defence sought to be raised by the management in the Appeal and, therefore, no fault can be found with the Tribunal's order giving no credibility to such statement.

7. In the facts and circumstances of the case, therefore, the impugned order does not disclose any jurisdictional error so as to warrant interference in exercise of powers under Article 227 of the Constitution. In fact, entire approach of the management discloses unwarranted harassment to the respondent no.1. Therefore, petition needs to be dismissed with costs.

8. In the result, the petition fails and is dismissed with costs of Rs.3,000/-. Rule is discharged accordingly. Costs to be paid to the respondent no.1.

[R.M.S. KHANDEPARKAR,J.]